

1 ORRICK, HERRINGTON & SUTCLIFFE LLP
KAREN G. JOHNSON-MCKEWAN (SBN 121570)
2 kjohnson-mckewan@orrick.com
ANNETTE L. HURST (SBN 148738)
3 ahurst@orrick.com
GABRIEL M. RAMSEY (SBN 209218)
4 gramsey@orrick.com
405 Howard Street, San Francisco, CA 94105
5 Tel: 1.415.773.5700 / Fax: 1.415.773.5759
PETER A. BICKS (*pro hac vice*)
6 pbicks@orrick.com
LISA T. SIMPSON (*pro hac vice*)
7 lsimpson@orrick.com
51 West 52nd Street, New York, NY 10019
8 Tel: 1.212.506.5000 / Fax: 1.212.506.5151

9 BOIES, SCHILLER & FLEXNER LLP
DAVID BOIES (*pro hac vice*)
10 dboies@bsflp.com
333 Main Street, Armonk, NY 10504
11 Tel: 1.914.749.8200 / Fax: 1.914.749.8300
STEVEN C. HOLTZMAN (SBN 144177)
12 sholtzman@bsflp.com
1999 Harrison St., Ste. 900, Oakland, CA 94612
13 Tel: 1.510.874.1000 / Fax: 1.510.874.1460

14 ORACLE CORPORATION
DORIAN DALEY (SBN 129049)
dorian.daley@oracle.com
15 DEBORAH K. MILLER (SBN 95527)
deborah.miller@oracle.com
16 MATTHEW M. SARBORARIA (SBN 211600)
matthew.sarboraria@oracle.com
17 RUCHIKA AGRAWAL (SBN 246058)
ruchika.agrawal@oracle.com
18 500 Oracle Parkway,
Redwood City, CA 94065
19 Tel: 650.506.5200 / Fax: 650.506.7117

20 *Attorneys for Plaintiff*
ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.

25 Plaintiff,

26 v.

27 GOOGLE INC.

28 Defendant.

Case No. CV 10-03561 WHA

**ORACLE'S PROPOSED JURY
INSTRUCTIONS RE GOOD FAITH/BAD
FAITH AND PROCEDURAL HISTORY**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William Alsup

Oracle respectfully submits the following proposed jury instructions pursuant to the parties' discussion with the Court this morning, Tr. 11:40:20-1152:5, and in further response to the Court's request for briefing re willfulness and bad faith. ECF No. 1880. Oracle was in the process of drafting these instructions to submit as a proposal to Google when Google filed ECF No. 1905 setting forth its proposed Statement to the Jury Regarding First Trial and Appeal. The instruction set forth in ECF No. 1905 is irrelevant, unnecessary and prejudicial for the reasons set forth in Oracle's Response to Court's Request (ECF No. 1880) For Briefing re Willfulness and Bad Faith Before Federal Circuit Decision. ECF 1900.

Oracle maintains and does not waive the arguments set forth in ECF 1900. However, in light of the Court's concerns, and in keeping with the Court's suggestions at Tr:1140:20-11:41:13; 1142:7-12; and 1144:3-20, Oracle submits the following proposed instructions for the Court's consideration:

Instruction No. 1: Good Faith/Bad Faith in Phase One

In considering whether Google's use of the declaring code and structure, sequence, and organization of the 37 Java API packages was in good faith or bad faith under the first fair use factor, you should consider only evidence and testimony pertaining to actions and events that occurred before Oracle filed this lawsuit on August 12, 2010. Your determination of Google's good faith or bad faith governs all of the versions of Android at issue in this case.

Instruction No. 2: Procedural History

You may have heard from a witness that there was a prior trial in this case. It is true that there was a prior trial. We have heard and may continue to hear evidence in this trial of a prior proceeding, which is the earlier trial that occurred in this case. Do not speculate about what happened in the prior trial. No determination on fair use was made one way or the other in that trial. It is up to you the jury to determine fair use on your own based on the evidence you hear in this trial.

1 Dated: May 16, 2016

Respectfully submitted,

2 Orrick, Herrington & Sutcliffe LLP

3 By: /s/ Lisa T. Simpson

4 Lisa T. Simpson

5 Counsel for ORACLE AMERICA, INC.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28